

MINUTES
MASSAGE THERAPY BOARD
August 10, 2004 - 9:00 A.M.
Room 4B - Fourth Floor - Heber Wells Bldg.
160 East 300 South, Salt Lake City, Utah

CONVENED: 9:15 A.M.

ADJOURNED: 12:53 P.M.

PRESENT: Clyde Ormond, Bureau Manager
Marty Simon, Board Secretary

Board Members:

Carlotta Veasy Richard Engar
Karen Lessman-Hughes

ABSENT:

None

GUESTS:

Craig Sauer, Provo College of Massage Therapy;
Roger Olbrot, AMTA and Myotherapy School; Craig
Anderson, Ogden College of Massage Therapy; Craig
Jackson, Division Director; Rob Matlak, Utah College
of Massage Therapy.

TOPICS FOR DISCUSSION:

DECISIONS AND RECOMMENDATIONS:

ADMINISTRATIVE BUSINESS:

Minutes

The minutes of the May 11, 2004 board meeting were
approved as revised.

APPOINTMENTS and NEW APPLICATIONS: Received since May 11, 2004

9:15 A.M.
Keith Ellis

Mr. Ellis met with the Board to review his application
that showed a felony charge of Coercion and
Enticement of a Minor for Illegal Sexual Activity on
June 14, 2001 and was found guilty on April 17, 2002.
His court probation was completed on May 25, 2004.
Mr. Ellis stated he had completed a counseling
program for the charge.

Mr. Ormond referred to Title 76, Chapter 4, Section
401, Utah Criminal Code, which prohibits the
Enticement of a Minor over the Internet. This is also
prohibited under 58-47b-502 (8), Unprofessional
Conduct, in the Massage Therapy Practice Act. Mr.
Ellis stated he is trying to create a business of personal
training, which also offers massage, for his clients. He
has been practicing at Healing Mountain School for the
past year. A motion was made by Mr. Engar and
seconded by Ms. Lessman-Hughes to table the decision
until the Division's legal counsel can review the statute

Keith Ellis Apt (cont)

to determine if his type of charge is actually addressed in the statute. The motion carried unanimously. Mr. Engar then explained his options for being able to appeal the Board's decision.

Mr. Ellis later came back into the meeting to find out what the legal counsel had decided. Mr. Ormond stated he had not heard back from him yet. He then explained to the Board what their options were, according to Title 58 Chapter 1.

The Board expressed concern about this being a Felony instead of a Misdemeanor, since his Plea in Abeyance did not reduce the charge. Mr. Ellis stated he cannot petition the court for a reduction of the charge until two years after the end of the probation. He then submitted character reference letters from Christopher Johnson, with Choice Touch, Ronald Trinidad, with R&R Properties, Russ Pfeil, Roadway Express, John A. Ellis, his father, and John H. Ellis, his brother.

A motion was made by Mr. Engar and seconded by Ms. Lessman-Hughes to go to a closed session. The motion carried unanimously. All guests were excused from the room.

A motion was made by Mr. Engar and seconded by Ms. Lessman-Hughes to come out of closed session. The motion carried unanimously. All guests were invited back into the room.

A motion was made by Mr. Engar and seconded by Ms. Lessman-Hughes to deny Mr. Ellis for licensure as a massage therapist, based upon unprofessional conduct as stated in 58-1. The motion carried unanimously. Mr. Ormond explained the reasons for the denial and his appeal rights to him.

9:30 A.M.
Kalvin Capener

Mr. Capener met with the Board to review and sign the Memorandum of Understanding (MOU) sent to him. He signed the MOU and was taken to meet with Susan Higgs, Division Probation Coordinator, to review the terms and conditions of the MOU. He will be scheduled to meet with the Board again at 10:15 A.M. on November 9, 2004.

9:45 A.M.
Cherlyn Martinez

Ms. Martinez had requested to meet with the Board to review the Board's decision, made at the February 10, 2004 board meeting, regarding her application for

Cherlyn Martinez Apt (cont)

licensure. She explained that, due to several recent family problems, she had to reschedule taking the NCBTMB exam to August 21, 2004. She is still on court probation because the amount of the restitution (\$10,000) has not been paid in full.

A motion was made by Ms. Lessman-Hughes and seconded by Mr. Engar to put her application on hold until she takes the exam on August 21, 2004. If she passes the exam she can be put on an MOU until the court probation is completed. Upon completion of the restitution she can be issued full licensure. The motion carried unanimously.

10:00 A.M.
Tim Barbee

Mr. Barbee met with the Board to review and sign his MOU. Mr. Barbee questioned the following items on the MOU: Item #5 regarding submitting a quarterly "Employer Report" because he wants to be self employed. Mr. Engar informed him #5 cannot be changed; while he is on probation he must work under direct supervision. Item #7 regarding if he has any additional charges during this probation he will agree to surrender his license. Mr. Ormond explained if he is arrested, during this probation, he must surrender his license until the Division can investigate and determine how the charge would affect his working in this profession. Item #10 regarding the MOU being a public document Mr. Ormond stated the public has a right to know he is on probation and they can request the documentation about the type of charge it was. Item #11 regarding if he leaves this state to practice in another state he must notify that state about his probation. He was informed that the state board there has the right to know of his probation status here. Item #12 regarding notifying the Board if he does not practice for a period of 30 days or longer. The Board stated this is standard procedure for all probationers.

The Board asked Mr. Barbee whom he is employed by. He stated he works with Olympic speed skaters. The Board determined the trainer would qualify more than the coach to be his supervisor and could complete the "Employer Reports" for him. Mr. Ormond explained the expungement process to him and informed him if he gets the charge expunged, and provides documentation of the expungement to the Division, he could have full licensure. Mr. Barbee then signed the MOU and was taken to meet with Susan Higgs,

Tim Barbee Apt (cont)

Division Probation Coordinator, to review the terms and conditions of the MOU. He will be scheduled to meet with the Board again at 10:00 A.M. on November 9, 2004.

10:15 A.M.
Cody Jenkins

Mr. Jenkins met with the Board for his probation interview. He informed the Board he is currently not employed as a massage therapist. Due to family financial problems, he is working in the oil fields for now. However, he is still doing the drug screens. Mr. Ormond informed him he could surrender his license for now, if the cost of the drug screens is a hardship for him, and reapply later for licensure when he is ready to start working in the profession again. Mr. Jenkins replied that he would prefer to continue taking them and comply with the terms and conditions of the MOU. The Board instructed him to continue sending in the "Employer Reports" and state on them he isn't currently employed in the profession.

Mr. Jenkins stated he had a 3rd Degree Felony five years ago and has contacted the judge about reducing the charge to a misdemeanor but he wants to have it expunged eventually. Mr. Ormond advised him to contact BCI about the process for doing that.

He submitted a letter dated May 10, 2004, from Rocky Bozarth, his sponsor in the Twelve Step Program, that commends him for his progress in attending the program. The Board requested that he submit a current progress letter from Mr. Bozarth as soon as possible. He stated he is currently scheduled to take the NCBTMB exam. The Board determined he is in compliance with the current MOU.

A motion was made by Mr. Engar and seconded by Ms. Lessman-Hughes to amend the MOU to state he must take and pass the NCBTMB exam by the November 1, 2004 meeting. The motion carried unanimously.

10:30 A.M.
Stephen Thornock

Mr. Thornock met with the Board for his probation interview. He submitted a positive "Employer Report" from his supervisor, Dr. Tran, at Health Quest Inc. He inquired whether he can go out on promotional chiropractor screenings as long as a doctor is present. The Board determined this would be OK.

Stephen Thorock Apt (cont)

The Board determined he is in compliance with his Stipulation and Order. Mr. Thornock was scheduled to meet with the Board again at 10:30 A.M. on November 9, 2004. He will bring in the BCI report, as required in his Stipulation and Order, at that time.

10:45 A.M.
Jason Darlington

Mr. Darlington met with the Board for his probation interview. He submitted a positive "Employer Report" from his supervisor, Emerri Carrillo, at the Canyon Cove Spa & Salon. The Board determined he is in compliance with his MOU. He was scheduled to meet with the Board again at 10:45 A.M. on November 9, 2004.

11:00 A.M.
Karla Smith

Ms. Smith met with the Board for her probation interview. The Board noted that her quarterly "Employer Report" had not been received. She stated she thought her employer had submitted it. She is currently employed by Creative Touch and Angela Mazza is her supervisor. It was also noted she has not returned the paperwork for her drug screening.

The Board determined she is not in compliance with her MOU until the "Employer Report" for the last quarter is received and the drug screening paper work has been received by the Division. She was taken to meet with Susan Higgs, Probation Coordinator to get set up for the drug screening. She was then scheduled to meet with the Board again at 11:00 A.M. on November 9, 2004.

11:15 A.M.
Lindsey Hathaway

Ms. Hathaway called to say she could not meet with the Board to review her criminal charges as it relates to her application for licensure. She requested to reschedule her appointment for the next board meeting. A motion was made by Mr. Engar and seconded by Ms. Lessman-Hughes to deny her for licensure as a massage therapist based upon R156-47b-302 of the Massage Therapy Practice Act Rules. She may reapply three years after the date of the judicial proceedings. The motion carried unanimously.

11:30 A.M.
Deborah Von Foller

Ms. Von Foller met with the Board to discuss her Stipulation and Order, effective October 30, 2003, wherein she agreed to surrender her massage therapy license for three years. Mr. Ormond reviewed the terms and conditions of the Stipulation and Order with the Board. Ms. Von Foller had been involved in unlawful conduct for touching the genitals of clients

Deborah Von Foller Apt (cont)

approximately twice a month while employed at Creative Touch Salon.

A motion was made by Mr. Engar and seconded by Ms. Lessman-Hughes to go to a closed session. The motion carried unanimously. All guests were excused from the room.

A motion was made by Ms. Lessman-Hughes and seconded by Mr. Engar to come out of closed session. The motion carried unanimously. All guests were invited back into the room.

Mr. Ormond stated her time to appeal the Order is gone. Therefore, she doesn't have due process in just talking to the Board; she would have to reapply to obtain this. The Board determined they want her to continue with her good behavior for another six months before she reapplies. They also stated they would still require that she have the psychosexual evaluation, as required in the order, and informed her there are qualified people who can administer this within the city. They encouraged her to maintain her course to stay away from drug use and recommended that she continue with her counseling, as it will look favorable on her application when she reapplies. Mr. Ormond then explained the probation process to her, since she will probably be placed on probation when she reapplies.

11:45 A.M
Michael Samo

Mr. Samo called to say he is no longer working in this profession and wants to surrender his license as a massage therapist. His request will be referred to the Bureau of Investigations for a Stipulation and Order for the surrender of his license.

CORRESPONDENCE:

NCBTMB Letter re: eligibility criteria

This letter is in reply to a letter from a Mr. Sweeny, criticizing NCBTMB requirements. The Board reviewed the letter with not further action taken.

Dawnette Cabaluna Email re: proposed curriculum

Ms. Cabaluna is objecting to the distribution of the subjects in the proposed curriculum requirements. This will be read at the Massage Therapy Rules hearing that should be held in November.

NACCAS Call for Comment

This was given to Craig Sauer to take to the Massage Therapy Education Advisory Committee for review.

DISCUSSION ITEMS:

Proposed Rules – May 14, 2004

It is proposed to change the language in R156-47b-302a, of the Massage Therapy Practice Act Rules, to require a minimum hours for the curriculum should be 600 hours and include the following: anatomy, physiology and pathology – 165 hours; massage theory, including the five basic strokes – 285 hours; professional standards, ethics, and business practices – 35 hours; safety and sanitation – 15 hours; clinic or practicum – 100 hours; and other related massage subjects as approved by the Division in collaboration with the Board.

The Board also requested that wording be added to R156-47b-302c (3) to also have the supervisor meet with the Board along with the apprentice, if the apprentice fails the exam three times.

Mr. Ormond asked the massage therapy school representatives present how much it would cost them to modify their curriculums to meet the change in the rules requirements. Mr. Olbrot stated it would be minimal for his school; Mr. Anderson stated it would be more than minimal for his school. Mr. Ormond requested a response from the Association as to how much more it will cost the student. Mr. Olbrot will send this to him within two weeks after the next Association meeting.

Current Rules re: R156-47b-302d

Mr. Ormond stated that Klare Bachman, Dept. of Commerce Director, had raised the issue about this profession's Good Moral Character being written so differently than the Good Moral Character rule in other statutes, specifically Burglar Alarm and Contract Security. He explained to her that in the security profession if an applicant has a felony or moral turpitude charge, the statute states you are prohibited from being licensed. The massage statute does not have such a statute so that's why the wording is different.

Ms. Bachman asked him to review this with the Board and ask them if this is appropriate to the industry. Mr. Engar suggested that we invite Ray Pippin to the next meeting along with Ms. Bachman to explain the rationale behind the formulation of this wording. This wording gives the Board more guidelines and is less arbitrary when reviewing applications. The Board feels that the profession itself dictates how the statute should

Sundancer Healing Arts Center Curriculum

NEXT BOARD MEETING:

operate. Mr. Ormond stated if the wording has to be amended it would be reviewed with the Association.

The Board reviewed the Committee's recommendation for this curriculum. A motion was made by Ms. Lessman-Hughes and seconded by Mr. Engar to approve the curriculum. The motion carried unanimously.

November 9, 2004

DATE APPROVED

CHAIRPERSON, MASSAGE
THERAPY BOARD

DATE APPROVED

BUREAU MANAGER, DIVISION OF
OCCUPATIONAL & PROFESSIONAL
LICENSING